



## Office of the Secretary

### 45 CFR Part 170

RIN 0955-AA02

## Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency; Correction

**AGENCY:** Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects typographical errors found in the interim final rule entitled “Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency” that was published in the Federal Register on November 4, 2020.

**DATES:** The corrections in this document are effective on December 4, 2020.

**FOR FURTHER INFORMATION CONTACT:** Michael Lipinski, Office of Policy, National Coordinator for Health Information Technology, 202-690-7151.

### SUPPLEMENTARY INFORMATION:

#### I. Background

This document corrects typographical errors found in the interim final rule entitled “Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency,” (**Federal Register** document 2020–24376) (85 FR 70064), that was published in the Federal Register on November 4, 2020. We summarize and correct these errors in the “Summary of Errors” and “Corrections of Errors” sections below.

#### II. Summary of Errors

### *A. Standardized API for Patient and Population Services*

As discussed in the preamble of the interim final rule, page 70077, second column, top of page, we stated that we added a new paragraph at § 170.315(g)(10)(v)(A)(I)(iii). However, in the amendatory instruction for the regulation text, we inadvertently added the wrong citation. In amendatory instruction 11.b., on page 70083, the words “Adding paragraph (g)(10)(iv)(A)(I)(iii)” should have read “Adding paragraph (g)(10)(v)(A)(I)(iii).” We are correcting the error by including the correct citation in this document.

### *B. Real World Testing*

In the interim final rule, on page 70076, second column, top half of the page, we corrected the real world testing regulation text in § 170.405(b)(3) by removing the words “for C–CDA” from the heading of the paragraph (85 FR 70076). In § 170.405, we also extended the compliance dates for updating certain criteria until December 31, 2022 (85 FR 70072). However, in amendatory instruction 16.a., on page 70084, we inadvertently only included the instruction for “(b)(3) introductory text.”. Because the revisions are being made to both the heading of § 170.405(b)(3) and the compliance date in § 170.405(b)(3)(ii), we are correcting the error in the amendatory instruction by adding “(b)(3)(ii),” after the phrase “(b)(3) introductory text.”.

## **III. Waiver of Proposed Rulemaking, Comment Period, and Delay in Effective Date**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the Federal Register before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition,

section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This document corrects typographical errors in regulation text of the interim final rule, but does not make substantive changes to the policies that were adopted in the interim final rule. As a result, this correcting document is intended to ensure that the information in the interim final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such procedures and requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the interim final rule or delaying the effective date would be contrary to the public interest because they are obvious typographical errors that are being corrected. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our methodologies or policies, but rather, we are simply implementing correctly the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the ONC Cures Act Final Rule and the interim final rule accurately reflect these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

#### **IV. Corrections of Errors**

In FR Doc 2020–24376 appearing on page 70064 in the **Federal Register** of Wednesday, November 4, 2020, for the reasons stated above, the Office of the Secretary corrects the following:

##### **§ 170.315 [Corrected]**

1. On page 70083, in the first column, the text of amendatory instruction 11 is corrected to read as follows:

11. Amend § 170.315 by:

- a. Revising paragraphs (b)(1)(iii)(A)(2), (b)(2)(i), (b)(2)(iii)(D) introductory text, (b)(2)(iv), (b)(3)(ii)(B)(2), (b)(7)(ii), (b)(8)(i)(B), (b)(9)(ii), (c)(3), (d)(13)(ii), (e)(1)(i)(A)(2), (f)(5)(iii)(B)(1) and (2), (g)(6)(i)(B), (g)(9)(i)(A)(2), (g)(10)(v)(A)(1)(ii), and (g)(10)(v)(A)(2)(ii); and
- b. Adding paragraph (g)(10)(v)(A)(1)(iii).

The revisions and addition read as follows:

**§ 170.405 [Corrected]**

2. On page 70084, in the second column, the text of amendatory instruction 16 is corrected to read as follows:

16. Amend § 170.405 by:

- a. Revising paragraphs (b)(1) introductory text, (b)(2)(ii) introductory text, (b)(3) introductory text, (b)(3)(ii), (b)(4)(ii), (b)(5)(ii), (b)(6)(ii), and (b)(7)(ii); and
- b. Adding paragraph (b)(10).

The revisions and addition read as follows:

**Wilma M. Robinson,**

Deputy Executive Secretary to the Department,

Department of Health and Human Services.

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